

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b))

Description of the case

W.P. No. 645 (M/S)/2001
(Old No. 9827/1991)

Sri Prem Nath S/o Sri Gopi Nath

Vs.

District Judge, Almora
& others.

Approved for reporting

~~Not approved for reporting~~

Date of decision 24.02.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Reserved

Writ Petition no. 645 (MS) 2001
(Old No. 9827/1991)

1. Sri Prem Nath S/o Sri Gopi Nath,
through his lawful attorney Sri Ramesh Nath,
2. Sri Ramesh Nath S/o Sri Prem Nath,
Both R/o Shankar Bhairav Mandir,
Almora, Distt. Almora, ... Petitioners.

Vs.

1. District Judge, Almora,
2. The Judge Small Causes Court (Civil Judge), Almora,
3. Sri Manohar Kandpal S/o Sri Kamal Kant Kandpal,
R/o Shankar Bhairav Mandir Road-Almora,
District-Almora. Respondents

Sri C.D. Bahuguna, learned counsel for the petitioner.
None for the respondents.

Dated :February 24, 2004:

Hon'ble Rajesh Tandon J.

Heard Sri C.D. Bahuguna, learned counsel for the petitioners and none for the respondents.

By the present writ petition, the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the impugned judgment and order dated 21.03.1989 passed by the J.S.C.C. (Civil Judge), Almora as well as the judgment and order dated 14.12.1990 passed by the District Judge, Almora.

The facts, in brief, are that the petitioner/plaintiff has instituted S.C.C. Suit no. 5/1987 against the respondent/defendant no. 1 before the judge Small Causes Court/Civil Judge, Almora for the recovery of rent of Rs. 750/-, eviction of the defendant from the accommodation in the house situated over survey plot no. 1720 relating to the Muntakib Khata no. 466 and plot nos. 1719, 1792 and 1793 relating to

the Muntakib no. 613, within the Municipal limit of Almora with the allegations that the petitioner no. 1 let out two portions of premises to the respondent no. 3 in the month for April, 1986 @ Rs. 250/- per months. One of the room which let out from the old building to the respondent no.3 was constructed on plot no. 1720 and a set of two rooms, kitchen and bath-room from the new building, which was constructed in the month of January 1986 on plot nos. 1719, 1722 & 1723, was let out to the respondent no.2. Since the respondent failed to pay the rent of the said premises from April 1987 to the petitioner, a notice was sent to the respondent requiring him to vacate the accommodation in dispute and to pay the arrears of rent within one month w.e.f. 30.07.1987. But, neither the defendant vacated the accommodation in house nor he paid the arrears of rent. Instead, the defendant sent reply to the notice claiming ownership in some portion of the house situated over Muntakib Khata no. 613. The defendant also replied that he had built the house over the land. Since the defendant has not paid the arrears of rent nor he has vacated the accommodation in question in spite of the notice sent to him, therefore, suit for recovery of rent, damages and eviction of the defendant from the accommodation in suit was filed.

The defendant has contested the suit and filed his written statement. In the written statement, it has been contended that he is the owner of the disputed accommodation and there is no question of relationship as landlord-tenant between the parties. So far as the tenancy relating to accommodation in the old house standing over plot no. 1720 at a monthly rent of Rs. 25/- is concerned the defendant has admitted being tenant of Ramesh Nath S/o Prem Nath.

However, the defendant has denied the tenancy of the house standing over plot nos. 1719, 1722 & 1723. The defendant has submitted that he has purchased some land from Ramesh Nath, the

son of the plaintiff and he himself built a house over the land on plot nos. 1719, 1722 & 1723, besides him Ramesh Nath has also constructed the house on the remaining portion of these plots.

The defendant has denied the ownership of the plaintiff. It was stated that after execution of sale-deed the defendant has completed construction to the extent of the half of the house and then the plaintiff had sent notice requiring him arrears of rent and vacation of the tenanted possession. It is further submitted by the defendant that after examination of the record concerned, he came to know that Ramesh Nath had practiced fraud upon him and had given the wrong description of the property in the sale-deed. The defendant did not try to ascertain the description of the property before purchase, nor he was present at the time of execution of the sale-deed and its registration. Ramesh Nath also moved Nagar Palika to make entry in the records concerned in respect of the ownership of half of the house in the name of the defendant and the Municipality, Almora assessed the house tax due from the defendant.

Both the parties have led their oral and documentary evidence before the J.S.C.C., Almora who after hearing learned counsel for both the parties has dismissed the suit of the petitioner/plaintiff on 21.02.1989 on the ground that the plaintiff is not the owner of the premises in question as the same was constructed by the defendant, as such, he was the owner thereof.

Aggrieved by the judgment of the Judge Small Causes Court, the plaintiff/petitioner preferred a Civil Revision no. 7 of 1989, before the District Judge, Almora. The Revisional Court has also dismissed the revision on 14.12.1990 on the ground that the suit suffers from the defect of mis-joinder of cause of action, as a composite notice for two separate premises was not permissive under the law. Hence this writ petition.

The Judge Small Causes Court has recorded a finding to the following effect:-

“On the other hand the defendant has produced Ex.Ka.7, the house taxes receipts showing that he was assessed the house tax of Rs. 432/- in respect of municipal house no. 83/2 and he paid the house tax on 13.7.87. The defendant has also filed Ex. Ka. 3 which is certified copy of application of Ramesh Nath requesting the Ex. Officer Nagar Palika to enter the ownership of the house in the name of Mahohar Kandpal. The defendant has also produced Ex. Ka. 4 & 5 to show that he presented the litigation in respect of disputed house, before the Hon’ble High Court paper no. 56c and 57c are the certified copied of sale-deed executed by Ramesh Nath in favour of one Om Prakash Agrawal which shows that rectification was done as contended by the defendant and supplementary sale-deed was executed. Paper no. 58-c and 59-c produced by the defendant show that the name of the defendant has been entered to the house tax assessment register of Nagar Palika in respect of half porition of house no. 83/2 at serial no. 98 Kha. Defendant has also filed paper no. 148-c which is the certified copy of extract of Muntkhib no. 613 within Municipality Almora, which shows that by order dated 23.7.84 which was passed in the mutation proceeding relating to year 83-84 the name of Prem Nath was substituted for the name of Ramesh Nath. This shows that the plaintiff is not the owner of Muntkhib no. 613 over which the disputed house is built. In this circumstance, I find that plaintiff Prem Nath was not entitled to institute for eviction and arrear of rent, as it can easily be supposed that his son Ramesh Nath constructed the house after mutation in his name on 23.7.84.

The Judge Small Causes Court has also referred about Original Suit no. 70/78 Manohar Nath v. Ramesh Kandpal. In the aforesaid suit

it has been held that the defendant Manohar Kandpal is entitled for portion of the house which stands over plots relating to Muntkhib Khata no. 613 and accordingly rectification of sale-deed has been ordered.

The J.S.C.C. has also recorded a finding that the suit was not maintainable, as it was filed for claiming three months rent alone.

The Revisional court has come to the conclusion that it was a case of two causes of action i.e. relating to premises no. 1719, 1722 & 1723 and other for premises/plot no. 1720. The revision, therefore, was rejected by the Revisional Court.

The Judge Small Causes Court has rightly come to the conclusion that the plaintiff is not the owner, it was also barred by Section 20 (2) (a) of Act no. 13 of 1972 as the arrears of three months alone cannot be claimed by the plaintiff. Apart from that, the Revisional Court has also concluded that the suit was bad for mis-joinder of necessary parties. Two causes of action have been joinder together and, as such, the suit has been dismissed by the both the courts below.

A perusal of the plaint shows that the suit was filed before the Judge Small Causes Court claiming the relief in respect of two separate properties. Paragraph no.2 of the plaint is quoted below:-

“कि वादी का एक पुराना दो मंजिला मकान मु०नं० 613 के पै०नं० 1720 में बना है। इस मकान के गोठ में जो दखिन तरफ है, जिसके दूसरी तरफ दूसरा किरायेदार श्री गिरीश फुलारा, एडवोकेट, किरायेदार है, प्रतिवादी को अप्रैल 1986 में दिया और वादी के नये मकान जो मोटर मार्ग के समीप है जो पै० नं० 1719, 22, 23 में बना है उसके दो मंजिल में दो कमरे मय किचन व बाथरूम के प्रतिवादी को किराये पर अप्रैल 1986 में दिये हैं। इन दोनों मकानात् का किराया रू० 250.00 माहवार है, जिन पर प्रतिवादी किरायेदार है। नया मकान जो पै०नं० 1719, 1722, 1723 में है वह जनवरी 86 में बना है अभी पूरा तैयार नहीं हुआ। नये मकान के दो मंजिला के उत्तरी भाग के एक कमरे में श्री गिरीशचन्द्र फुलारा एडवोकेट किरायेदार हैं।”

In the relief clause in paragraph-9 sub-clause-2, the petitioner has claimed the following relief:-

“कि प्रतिवादी वादी को पुराने मकान पै0नं0 1720 के गोठ में जो दखिन तरफ है, जिसके उत्तर तरफ दूसरा किरायेदार श्री गिरीश फुलारा किरायेदार हैं खाली कर कब्जा देवें तथा पै0 नं0 1719, 1722, 1723 जो मु0नं0 613 के अन्दर है उसमें बने नये मकान के उपर तथा दखिन तरफ वाले हिस्से में दो कमरे का सैट मय किचन व बाथरूम लैटरीन में कब्जा देवें— इस भाग के दखिन तरफ श्री ओमप्रकाश अग्रवाल के मकान से मिला है, मे भी कब्जा देवें।”

The Judge Small Causes Court has recorded a finding that there is a substantial dispute between the defendant and Ramesh Nath S/o the plaintiff regarding the title of the property. The Original Suit no. 70 of 1987 Manohar Nath v. Ramesh Kandpal has been filed by the defendant Manohar Kandpal against Ramesh Nath for rectification of the sale-deed.

The petitioner, in his writ petition, in paragraph-24 has stated that Ist Appeal no. 275 of 1989 is pending before the High Court between the same parties regarding the same subject-matter. The relevant facts to that effect are quoted as under:-

“That on First Appeal no. 275 of 1989, is pending before his Hon’ble court between the same parties regarding the same subject matter. The original suit no. 7 of 1987 was filed by the respondent no. 3 against the petitioner in the court of Civil Judge, Almora in the year 1987, claiming the ownership of the premises in question. The learned Civil Judge decreed the suit on 21.3.89, against which the petitioners filed a First Appeal no. 275 of 1989 before this Hon’ble court. The appeal was admitted by this Hon’ble Court and the operation of the decree was stayed. The appeal is still pending before his Hon’ble Court.”

Nothing was brought to the notice of this Court with regard to the result of the Ist Appeal.

A perusal of the judgment of the District Judge in Civil Revision no. 7 of 1989, shows that the plaint has been non-suited only on the ground that one single suit could not have been filed for ejection and recovery of arrears of rent in respect of two separate premises. The Revisional Court has also recorded a finding that the plaintiff should have served the defendant with two separate notices and, as such, the suit has been held to be misconceived.

Since, the Revisional Court has not given any finding on the merits of the claim of the petitioner, it will be open for the petitioner to establish his claim in appropriate proceedings in the courts of law.

I find no illegality in the findings recorded by the Revisional Court. Consequently, no interference can be made under Article 226 of the Constitution of India. Therefore, the writ petition is dismissed with no order as to costs.

(Rajesh Tandon, J.)

NCM: